

KENT GREGERSEN

v.
BUREAU OF LAND MANAGEMENT

IBLA 85-759

Decided March 8, 1988

Appeal from decision of Administrative Law Judge Robert W. Mesch directing grazier to pay grazing trespass damages for grazing cattle without authorization in the Ogden Allotment (UT-050-85-1).

Affirmed.

1. Administrative Procedure: Administrative Review -- Grazing and Grazing Lands -- Grazing Permits and Licenses: Appeals

Where facts and law are properly set forth and applied in administrative Law Judge's decision affirming the BLM Area Manager's decision determining that the appellant had grazed livestock in his allotment beyond his authorized use; that the grazing of the livestock constituted a willful trespass; and that the appellant's grazing authorization should be suspended until he paid assessed trespass damages, and appellant has made no showing that the decision is in error, the decision will be affirmed.

APPEARANCES: Kent Gregersen, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Kent Gregersen has appealed from a decision dated June 17, 1985, by Administrative Law Judge Robert W. Mesch, affirming a decision of the Sevier River Resource Area Manager, Bureau of Land Management (BLM) (UT-050-85-1) determining that appellant had committed a willful grazing trespass.

The record shows that on November 7, 1984, the Sevier River Resource Area Manager, BLM, issued a decision determining that appellant had grazed livestock in the Ogden Allotment beyond his authorized period of use in willful trespass. BLM determined that he was liable for willful trespass damages in the amount of \$ 684.73 and that his grazing authorization of 11 cattle from May 1 through July 15 on the Ogden allotment was suspended until the trespass was settled. After Gregersen filed an appeal from the BLM decision, a hearing was held before Administrative Law Judge Robert Mesch in Richfield, Utah, on April 23, 1985. From the evidence presented, Judge Mesch concluded that BLM's decision was correct in finding willful trespass and that the trespass

damages were properly assessed at three times the value of the forage consumed as required by 43 CFR 4150.3(c) for a total of \$ 684.73. He concluded in pertinent part that:

17. In this case, however, the evidence shows that (i) the appellant left his cattle in the allotment in order to obtain Federal forage and compensation for use of his private land by deer and his cattle, (ii) the appellant's cattle were found by BLM personnel in areas of the public land some distance from the appellant's unfenced private land and where they would have had to have been herded to get to the areas, and (iii) the forage available for cattle on the appellant's unfenced private land comprises a de minimis percentage of the total forage available for consumption by cattle within the allotment.

18. The Area Manager did not err, and in fact was overly conservative, in finding that the appellant had (i) 16 head of cattle in trespass within the Ogden Allotment from July 18 to August 21, 1984, for a total of 18.66 AUM's of Federal forage; (ii) 10 head of cattle in trespass within the Ogden Allotment from August 22 to August 28, 1984, for a total of 2.33 AUM's of Federal forage; and (iii) 16 head of cattle in trespass within the Ogden Allotment from August 29 to September 6, 1984, for a total of 4.80 AUM's of Federal forage.

19. The Area Manager complied with 43 CFR 4150.3(a) in calculating the value of the Federal forage consumed at \$ 8.85 per AUM, or a total of \$ 228.24 for the 25.79 AUM's.

20. The appellant's actions constituted a willful trespass and were a repetition of his willful trespass two years earlier. The Area Manager acted properly in assessing damages at three times the value of the forage consumed, as required by 43 CFR 4150.3(c), for a total of \$ 684.73.

21. The appellant cannot be permitted, as he has attempted to do in this case, to submit oral, indefinite, uncertain or untimely requests to the BLM, and, then, when he does not obtain the action that he perceives to be proper from BLM, take the law into his own hands and seek his own remedies by deliberately violating the terms and conditions of his grazing authorization and the grazing regulations.

22. The appellant cannot obtain, as he has attempted to do in this case, a determination as to the propriety of past actions of the BLM. They are not relevant in a trespass case, which involves only the questions of whether a trespass occurred, and, if so, the amount of damages.

23. The proper course for the appellant to pursue is to submit a written request setting forth specifically, separately, clearly and concisely every action that he wishes the BLM to

take with respect to his grazing preference and the allotment. If the BLM does not issue a timely written decision ruling on each action that the appellant requests, he can seek to compel the issuance of a decision by resorting to higher authorities within the BLM, and, if unsuccessful, he can then seek relief in the United States District Court. If the BLM issues an adverse decision, the appellant can appeal to an administrative law judge and obtain a determination as to the propriety of the action of the BLM in denying his request.

[1] On appeal to this Board, appellant takes issue with the Administrative Law Judge's conclusions, basically reiterating the arguments considered below. We have thoroughly reviewed the record of this case and the arguments advanced by appellant. Judge Mesch's decision sets out a full summary of the testimony, the relevant evidence, and applicable law. The record substantiates all findings made by Judge Mesch and the incidents of trespass charged by BLM. Appellant's statement of reasons fails to show any error in the Administrative Law Judge's conclusions. Instead, appellant seeks to explain away his conduct based on his poor relationship with BLM on other matters and refers to an alleged lack of responsiveness and harassment by the agency as justification for his actions. As Judge Mesch has correctly indicated, these ancillary matters have no bearing on the issue of trespass. Moreover, appellant admitted the fact of his willful trespass at the hearing explaining that he had become frustrated with BLM on his attempts to obtain an exchange of use agreement. He testified: "They have deprived me of using this for two years and I have applied in the proper manner according to BLM rules and regulations [and] I have been denied. So last year I deliberately left the cattle out there to get some benefit off the ground" (Tr. 66). This admission alone is dispositive of the fact of violation.

Accordingly we find that appellant's allegations fall far short of demonstrating error in the decision below and we can find no reason to disturb the Administrative Law Judge's ruling.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member